

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

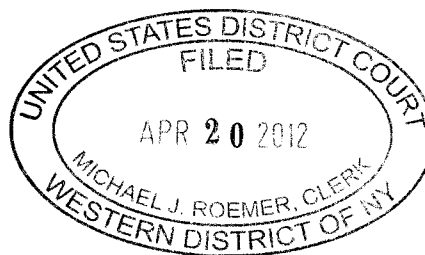
FRANK DURWOOD MIRAGLIA,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.



-PS-

DECISION AND ORDER
12-CV-0267A

Plaintiff has requested permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) and has met the statutory requirements. In addition, plaintiff has submitted an application for assignment of counsel. Accordingly, plaintiff's request to proceed as a poor person is hereby granted and plaintiff's request for assignment of counsel is denied as premature.¹ In addition, plaintiff's complaint has been reviewed by the Court with respect to the 28 U.S.C. § 1915(e)(2) criteria.

The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the named defendant without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David G. Larimer".

DAVID G. LARIMER
United States District Judge

DATED: April 18, 2012
Rochester, New York

¹A more fully developed record will be necessary before the Court can determine whether plaintiff's chances of success warrant the appointment of counsel. Therefore, plaintiff's motion is denied without prejudice to its renewal at such time as the existence of a potentially meritorious claim may be demonstrated. *See Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997) (when determining whether to appoint counsel, the Court must first look to the "likelihood of merit" of the underlying dispute); *see also Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989) (The factors to be considered in ruling on a motion for the appointment of counsel include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel.")